

REMARKS

The Office rejects claims 1-19 in the subject application. Applicant amends claim 1. Claims 1-19 (1 independent claim and 19 total claims) remain pending in the application.

Support for the amendment may be found in the originally filed specification, claims, and figures. No new matter has been introduced by these amendments. For example, support for amended claim 1 can be found at paragraphs [0008], [0087], and [0202] of the subject application (as published on September 19, 2002).

Reconsideration of this application is respectfully requested.

35 U.S.C. §102 REJECTIONS

Yourlo Reference

The Office rejects claims 1-4, 6-9, 12, 15, and 16 under 35 U.S.C. §102(e) as allegedly being anticipated by Yourlo¹. Applicant respectfully traverses the rejection.

Yourlo discloses a music database system in a kiosk 102, where kiosk 102 contains pieces of music 100. A music lover inputs a music query 104 to kiosk 102, which searches a database and outputs a desired piece of music 106 (based on music query 104). More specifically, a server 202 searches the database based on music query 104 to output a piece of music 106.² Yourlo discloses figures illustrating the distance between two pieces of music, where the pieces of music are defined by pitch, tempo, and sharpness (or timbre).³

The Office relies on Figure 18 for disclosing a tempo histogram and a timbre histogram as allegedly disclosing a variable condition input section (not pointed out by the Office) for receiving a variable condition (allegedly tempo or timbre) varying in accordance with time (allegedly 1 Hz for 50% of the time). But Yourlo fails to disclose a variable condition input section as recited in claim 1 (and claims 2-4, 6-9, 12, 15, and 16, which variously depend from claim 1).

Even though Yourlo discloses histograms showing the percentage of time a piece of music has a certain tempo or brightness, Yourlo fails to disclose inputting a

¹ U.S. Patent No. 6,201,176, Issued March 13, 2001 to Canon Kabushiki Kaisha.

² Yourlo, column 4, lines 15-50.

³ Yourlo, column 12, lines 10-44.

tempo or brightness as a variable condition to vary with time in an external environment. Accordingly, Yourlo fails to disclose "a variable condition varying in accordance with time in an external environment" as recited in claim 1 (and claims 2-4, 6-9, 12, 15, and 16, which variously depend from claim 1) (emphasis added).

Yourlo also fails to disclose "a selection section for selecting at least one audio information stream from the plurality of audio information streams based on at least the inherent condition and the variable condition" as recited in claim 1 (and claims 2-4, 6-9, 12, 15, and 16, which variously depend from claim 1) (emphasis added). Server 202 searches the database based on music query 104 to output a piece of music 106 based on music query 104. However, this search is based only on music query 104 and not both music query 104 and the pitch, tempo, or timbre (the alleged variable condition in Yourlo).

Thus, Yourlo fails to disclose one or more limitations of the claimed invention, so that claims 1-4, 6-9, 12, 15, and 16 are patentable over Yourlo.

35 U.S.C. § 103 REJECTIONS

Yourlo and Katinsky References

The Office rejects claim 13 under 35 U.S.C. §103(a) as allegedly being unpatentable over Yourlo in view of Katinsky⁴. Applicant respectfully traverses the rejection.

Based on the foregoing discussion of Yourlo, claim 13 (which variously depends from claim 1) is patentable over Yourlo in view of Katinsky.

Katinsky discloses a web application for accessing media streams. A site-driven area 18 (i.e., a region of a web page 10) is controlled by a server in response to user actions. The contents of a synchronized display are determined by the Internet site application program (and not chosen by the user). The Internet site can use site-driven area 18 to present a rotating banner. The contents of site-driven area 18 can be based on user preferences, a user history, or a user profile. For example, when a media object is playing (a music video clip), site-driven area 18 shows a rotating banner 122 (advertising banner) that is specific to the media object (music video). The point of

⁴ U.S. Patent No. 6,452,609, issued September 17, 2002 to SuperTuner.com.

Katinsky is to have the synchronized banner 122 provide information in parallel with the playing media object.⁵

But Yourlo in view of Katinsky fails to teach, advise, or suggest "the variable condition input section provides the individual with an input interface based on the individual preference information" as recited in claim 13. Indeed, Katinsky clearly points out that contents of a synchronized display are determined by the Internet site application program (and not chosen by the user). As such, even though the contents of area 18 can be based on user preferences, a user history, or a user profile, the individual is not provided with an input interface based on the individual preference information. In this way, Katinsky teaches away from the claimed invention by teaching that the contents of the display are determined by the Internet site application program and not chosen by the user.

Thus, Yourlo in view of Katinsky fails to teach, advise, or suggest one or more limitations of the claimed invention, so that claim 13 is patentable over Yourlo in view of Katinsky.

Yourlo and Anderson References

The Office rejects claims 5, 10, 11, and 14 under 35 U.S.C. §103(a) as allegedly being unpatentable over Yourlo in view of Anderson⁶. Applicant respectfully traverses the rejection.

Anderson discloses an information retrieval system, which can dynamically prioritize search request results prior to outputting the results to a user. This provides guidance to the user. When a database search yields too many hits to present to the user, the results are organized into groups (depending on the category). Each possible group relates to a different aspect, which differentiates between the search results (e.g., geographical location, hours of operation, amenities).⁷ For example, in searching for a car wash, the search results are presented by geographic location. The Anderson system can categorize the search results by price and brand too.⁸

⁵ Katinsky, column 7, lines 15-35.

⁶ U.S. Patent No. 6,625,595, issued September 23, 2003 to BellSouth Intellectual Property Corporation.

⁷ Anderson, column 2, lines 36-46.

⁸ Anderson, column 7, lines 38-44.

But Yourlo in view of Anderson fails to teach, advise, or suggest "an economic condition input section for receiving an economic condition representing a desired cost for the at least one audio information stream" as recited in claims 5, 10, and 14. Even if Anderson can categorize search results based on price, Anderson does not have an input section for receiving an economic condition representing a desired cost. In other words, the Anderson system does not accept input for a desired cost, it can merely sort categories by price.

Thus, Yourlo in view of Anderson fails to teach, advise, or suggest one or more limitations of the claimed invention, so that claims 5, 10, 11, and 14 are patentable over Yourlo in view of Anderson.

CONCLUSION

Thus, the Applicant respectfully submits that the present application is in condition for allowance. Reconsideration of the application is thus requested. Applicant invites the Office to telephone the undersigned if he or she has any questions whatsoever regarding this Response or the present application in general.

Respectfully submitted,

By: S. Shahpar 12-22-04
Shahpar Shahpar
Reg. No. 45,875

SNELL & WILMER L.L.P.
One Arizona Center
400 East Van Buren
Phoenix, Arizona 85004-2202
Phone: (602) 382-6306
Fax: (602) 382-6070
Email: sshahpar@swlaw.com